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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,062	04/27/2001	Ramon Vega	60005174Z146	1683

7590 09/23/2002
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80528-9599

EXAMINER

TRAN, LY T

ART UNIT PAPER NUMBER

2853

DATE MAILED: 09/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/845,062

Applicant(s)

VEGA ET AL.

Examiner

Ly T TRAN

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 16 and 18-25 is/are rejected.
- 7) ☒ Claim(s) 9-15 and 26 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- Species 1: an ink jet device comprising a temporary spittoon as discloses in specification page 6-page 17: line 1-11.
- Species 2: an ink jet device comprising a temporary spittoon with holes as discloses page 17: line 14-31- page 19

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there is no generic claim.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

A telephone call was made to Peter Leppman to request an oral election to the above restriction requirement, and the result in an election being made with specie 1, claims 1-16, 18-26 without traverse.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-8, 16, 18-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Osborne et al. (USPN 5,896,145).

With respect to claims 1 and 22-25, Osborne et al. discloses an ink jet apparatus and a method comprising:

- At least one print head arranged to eject ink drops in a spitting operation
Column 6: line 63-67, Column 7: line 1-6)
- A temporary spittoon arranged to move between first and second position
(Fig.3: element 70), the temporary spittoon being arranged in the first position such that the ink drops are ejected onto a surface of the temporary spittoon, the temporary spittoon being further arranged to transfer the ink to the spittoon when in the second position (Fig.3, Column 8: line 2-58)
- In the second position, the temporary spittoon being arranged to transfer the ink to the spittoon and being located sufficiently distant from the nozzle plate to allow a capping or wiping operation to be performed (Fig.3)
- A reciprocating shuttle arranged to move between first and second position and to actuate the spitting and the capping assembly (Fig.3: element 70, 64, 65)
- The spitting surface is located in a position such that the ink ejected onto the spitting surface is transferable under gravity to a permanent ink storage container (Fig.3: element 90, 96, 74).

With respect to claim 4, Osborne et al. discloses the surface of the temporary spittoon is substantially horizontal when the temporary spittoon is in the first position (Fig.3: element 86).

With respect to claim 5, Osborne et al. discloses the temporary spittoon in mounted on a shuttle, the shuttle being arranged to move the temporary spittoon between the first and second position (Fig.3)

With respect to claim 6, Osborne et al. disclose the temporary spittoon is arranged to be orientated in a first orientation when in the first position and in a second orientation different to the first orientation when positioned in the second position such that when positioned in the second position the temporary spittoon is arranged to transfer the ink on the spittoon surface under gravity (Fig.3: element 95)

With respect to claim 7, Osborne et al. discloses the temporary spittoon is rotatably mounted to the shuttle and is arranged to rotated about the mounting between the first and second orientation (Fig.3, Column 8: line 13-18).

With respect to claim 8, Osborne et al. discloses the temporary spittoon is arranged to rotate about the mounting under the action of the cam (Column 13: line 18-56)

With respect to claim 16, Osborne et al. discloses a plurality of pens, wherein in the first position the temporary spittoon is arranged such that ink drops ejected in spittoon operations by one or more of plurality of pens onto a surface of the temporary spittoon (Column 8: line 13-18)

With respect to claim 18, Osborne et al. discloses one scraper arranged removed ink from the temporary spittoon surface as temporary spittoon moves between the first and second position (Fig.3: element 90).

With respect to claim 19, Osborne et al. discloses the device is arranged such that in the second position the temporary spittoon is located substantially in contact with the spittoon of ink stored, the temporary spittoon being adapted such that the ink on the temporary spittoon surface is able to flow from the temporary spittoon the spittoon (Fig.3: element 95).

With respect to claim 20, Osborne et al. discloses the temporary spittoon comprises a porous body adapted to allow the ink on the temporary spittoon surface to flow through the temporary spittoon to spittoon (Column 9: line 10-12).

With respect to claim 21, Osborne et al. discloses the ink jet device is a printer (Column 10: line 1).

Allowable Subject Matter

3. Claims 9-15 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9-13 appear to be allowable over prior art of record because at least prior art has not been found to anticipate or teach or suggest the temporary spittoon comprises a flexible material fixedly mounted to the shuttle, the temporary spittoon being arranged to bend or deform between the first and second orientations.

Claims 14-15 appear to be allowable over prior art of record because at least prior art has not been found to anticipate or teach or suggest a print head servicing comprising a cap or a wiper arranged to be moveable between a non-active position distant from the print head and an active position adjacent to the print head, wherein the movement of the temporary spittoon is linked to that of the servicing element such that the temporary spittoon is arranged to be in the first position when the servicing element is in the non-active position and to be in the second position when the servicing element is in active position.

Claim 26 appears to be allowable over prior art of record because at least prior art has not been found to anticipate or teach or suggest the step of capping or wiping the print head when the spitting surface is in the second position.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ly T TRAN whose telephone number is 703-308-0752. The examiner can normally be reached on M-F (7:30am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 703-308-3126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7724 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0967.



September 11, 2002



John Barlow
Supervisory Patent Examiner
Technology Center 2800